

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

JULIUS M. GLADNEY,
Defendant.

No. CR-05-6023-FVS

ORDER DENYING DEFENDANT'S
MOTION UNDER 18 U.S.C. §
3582 FOR MODIFICATION OF
SENTENCE

THIS MATTER came before the Court on Defendant's motion under 18 U.S.C. § 3582(c)(2) to modify his sentence. Defendant is proceeding pro se. Plaintiff is represented by the Office of the United States Attorney.

BACKGROUND

On September 13, 2005, Petitioner was charged by superseding indictment with distributing over 5 grams of cocaine base on three separate occasions: July 1, 2005 (Count 1), July 6, 2005 (Count 2), and July 19, 2005 (Count 3). (ECF No. 7). A jury trial commenced on May 30, 2006. (ECF No. 82). On June 1, 2006, the jury returned a verdict of guilty as to all three counts. (ECF No. 89). On November 30, 2006, the Court sentenced Petitioner to a term of 97 months on Count 1, 120 months on Count 2, and 120 months on Count 3, all to run concurrently. (ECF No. 121). Judgment was entered on December 5, 2006. (ECF No. 122).

DISCUSSION

Defendant requests a reduction of his sentence, pursuant to 18 U.S.C. § 3582(c)(2), based upon a recent decision by the United States

1 Supreme Court, *Dorsey v. United States*, 132 S.Ct. 2321 (June 21,
2 2012).

3 18 U.S.C. § 3582(c)(2), the statutory basis for Defendant's
4 motion, provides as follows:

5 [I]n the case of a defendant who has been sentenced to a term of
6 imprisonment based on a sentencing range that has subsequently
7 been lowered by the Sentencing Commission pursuant to 28 U.S.C.
8 994(o), upon motion of the defendant or the Director of the
9 Bureau of Prisons, or on its own motion, the court may reduce the
term of imprisonment, after considering the factors set forth in
section 3553(a) to the extent that they are applicable, if such a
reduction is consistent with applicable policy statements issued
by the Sentencing Commission.

10 The language of § 3582(c)(2) provides the Court with authorization to
11 reduce a sentence where the applicable "sentencing range" has been
12 subsequently lowered. Given that Defendant was sentenced pursuant to
13 a statute, and not under the United States Sentencing Guidelines,
14 there was no "sentencing range" which could be subsequently lowered by
15 the Sentencing Commission. Consequently, Section 3582(c)(2) does not
16 confer jurisdiction on this Court to modify Defendant's sentence.
17 *U.S. v. Jackson*, 577 F.3d 1032, 1035-1036 (9th Cir. 2009) (a defendant
18 sentenced pursuant to a mandatory minimum, and not a sentencing
19 guideline range, is ineligible for a sentence reduction under Section
20 3582(c)(2)).

21 In any event, the Supreme Court in *Dorsey* held that the more
22 lenient penalties of the Fair Sentencing Act of 2010, which reduced
23 the crack-to-powder cocaine disparity from 100-to-1 to 18-to-1,¹

24 ¹In 2010, Congress enacted the Fair Sentencing Act into law.
25 The Fair Sentencing Act increased the drug amounts triggering
26 mandatory minimums for crack trafficking offenses. The change
had the effect of lowering the 100-to-1 crack-to-powder ratio to
18-to-1. The Fair Sentencing Act took effect on August 3, 2010.

1 applied to offenders who committed a crack cocaine crime before the
2 effective date of the Act, August 3, 2010, but who were sentenced
3 after that date. Defendant was sentenced on November 30, 2006, well
4 before the effective date of the Fair Sentencing Act of 2010.
5 Accordingly, *Dorsey* does not apply to Defendant.

6 Defendant is serving a statutory mandatory minimum sentence. A
7 reduction of Defendant's sentence is thus not authorized under Section
8 3582(c)(2). Moreover, the *Dorsey* decision, the basis for Defendant's
9 motion, is inapplicable to Defendant because it addresses only those
10 crack cocaine offenders who were sentenced after August 3, 2010.
11 Defendant's motion to modify sentence pursuant to 18 U.S.C. §
12 3582(c)(2) (**ECF No. 174**) is **DENIED**.

13 **IT IS SO ORDERED.** The District Court Executive is hereby
14 directed to enter this order and furnish copies to Defendant and to
15 counsel for the United States.

16 **DATED** this 27th day of July, 2012.

17 S/Fred Van Sickle
18 Fred Van Sickle
19 Senior United States District Judge
20
21
22

23 _____
24 The Commission promulgated conforming emergency Guidelines
25 amendments that became effective on November 1, 2010. 75
26 Fed.Reg. 66188 (2010). A permanent version of those Guidelines
amendments took effect on November 1, 2011. *Dorsey*, 132 S.Ct. at
2329.